

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

TEON MORRIS,

Plaintiff,

v.

D. BLOWERS, PIERCE COUNTY,

Defendants.

CASE NO. C13-5989 RBL-JRC

REPORT AND RECOMMENDATION

NOTED FOR:  
MAY 15, 2015

The District Court has referred this 42 U.S.C. § 1983 civil rights action to United States Magistrate Judge J. Richard Creatura pursuant to 28 U.S.C. § 636(b)(1)(A) and (B), and local Magistrate Judge Rules MJR1, MJR3 and MJR4.

Currently before the Court is defendants' renewed motion to dismiss, brought pursuant to Fed. R. Civ. P. 12(b)(1) and Fed. R. Civ. P. 12(b)(6) (Dkt. 22). The Court rejects defendants' argument that the statute of limitation in this action is the two-year statute of limitation used for the state torts of false arrest and false imprisonment. Washington State's three-year personal injury statute of limitation applies to civil rights actions. However, under the facts of this case, plaintiff's false arrest claim against defendant Blowers is still untimely. Further, on the merits, plaintiff fails to state a claim for false arrest or false imprisonment against defendant Blowers or

Pierce County. Plaintiff has been given multiple opportunities to amend his complaint. Accordingly, the Court recommends dismissal of the action for failure to state a claim with the dismissal counting as a strike pursuant to 28 U.S.C. § 1915.

#### PROCEDURAL HISTORY

This is defendants' second motion to dismiss. The Court recommended granting the first motion, but gave plaintiff leave to amend his complaint (*see* Dkt. 14). Plaintiff's second amended complaint did not comply with Fed. R. Civ. P. 8. The Court ordered plaintiff to file a third amended complaint (Dkt. 20). After plaintiff filed a third amended complaint (Dkt. 21), defendants renewed their motion to dismiss (Dkt 22).

#### STANDARD OF REVIEW

1. Fed. R. Civ. P. 12(b)(1) - Subject matter jurisdiction based on the statute of limitations.

Fed. R. Civ. P. 12(b)(1) authorizes the dismissal of a case for lack of subject matter jurisdiction if the district court lacks the statutory and constitutional power to adjudicate the case. *Home Builders Ass'n of Miss., Inc v. City of Madison*, 143 F.3d 1006, 1010 (5th Cir. 1998). A court may dismiss for lack of jurisdiction based on any one of three things: (1) the complaint alone; (2) the complaint supplemented by undisputed facts in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts. *Clark v. Tarrant County*, 798 F.2d 736, 741 (5th Cir. 1986). As with a Fed. R. Civ. P. 12(b)(6) motion, for purposes of ruling on the motion, material allegations in the complaint are taken as admitted.

2. Fed. R. Civ. P. 12(b)(6) - Dismissal for failure to state a claim.

*Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) provides that a court should dismiss a claim pursuant to Fed. R. Civ. P. 12(b)(6) either because of the lack of a cognizable legal

1 theory or because of the absence of sufficient facts alleged under a cognizable legal theory. *See,*  
2 *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990).

3 For purposes of ruling on this motion, material allegations in the complaint are taken as  
4 admitted and the complaint is construed in plaintiff's favor. *Keniston v. Roberts*, 717 F.2d 1295  
5 (9th Cir. 1983). "While a complaint attacked by a Fed. R. Civ. P. 12(b)(6) motion to dismiss  
6 does not need detailed factual allegations, plaintiff's obligation to provide the grounds of his  
7 entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the  
8 elements of a cause of action will not do." *Twombly*, 550 U.S. 544, 545 (2007) (internal citations  
9 omitted). "Factual allegations must be enough to raise a right to relief above the speculative  
10 level, on the assumption that all the allegations in the complaint are true (even if doubtful in  
11 fact)." *Id.* at 545. Plaintiff must allege "enough facts to state a claim to relief that is plausible on  
12 its face." *Id.* at 570. The Court liberally construes a pro se pleading but cannot supply facts to a  
13 complaint. *Pena v. Gardner*, 976 F.2d 469 (9th Cir. 1992).

14 3. Documents considered.

15 In considering defendants' motion to dismiss, the Court has considered the facts as  
16 alleged that plaintiff set forth in both his first and third amended complaints (Dkt. 7 and 21).  
17 Plaintiff's first amended complaint contained a much more detailed statement of facts, while the  
18 third amended complaint named proper defendants. Further, the Court has considered Pierce  
19 County Superior Court public records that are attached to counsel's affidavit (Dkt. 23). These  
20 documents include the information charging plaintiff with escape, the order establishing  
21 conditions pending trial on the escape charge, the motion and order dismissing the escape charge  
22 with prejudice, and the docket sheets on plaintiff's underlying misdemeanor charges (*id.*). The  
23 Court may review "materials of which the court may take judicial notice" without converting a  
24

1 motion to dismiss to a motion for summary judgment. *See Barron v. Reich*, 13 F.3d 1370, 1377  
2 (9th Cir. 1994).

### 3 FACTS

4 Unnamed law enforcement personnel initially arrested plaintiff pursuant to a Pierce  
5 County District Court warrant issued on July 20, 2010 (*see* Dkt. 23, p. 14). Plaintiff had failed to  
6 appear on two misdemeanor charges (*id.*). Unnamed law enforcement personnel arrested  
7 plaintiff on August 19, 2010 (*id.*). The Pierce County District Court scheduled plaintiff to appear  
8 on August 20, 2010 (*id.*). However, plaintiff became ill and jail officials moved plaintiff from  
9 the Pierce County Jail to Tacoma General Hospital (*see* Dkt. 7, p. 3). After plaintiff spent  
10 several days in the hospital, hospital staff released him and told him to go home and continue  
11 taking his medication (*id.*). On August 26, 2010, after plaintiff had recovered from his illness,  
12 plaintiff returned to the Pierce County Jail to retrieve his personal property.

13 Defendant Blowers arrested plaintiff for second degree escape on August 26, 2010, when  
14 plaintiff returned to the jail to retrieve his personal property (*id.*). On August 27, 2010, the  
15 Pierce County District Court released plaintiff from confinement on the misdemeanor charges  
16 (Dkt. 23, p 15). The Pierce Superior Court escape charge was still pending, thus plaintiff  
17 remained in jail (Dkt. 23, p. 7). The Pierce County Superior Court appointed counsel and found  
18 probable cause to hold plaintiff on the escape charge (*id.*). Plaintiff did not post bail and the state  
19 held plaintiff from August 26, 2010 until January 12, 2011. On January 11, 2011, defense  
20 counsel determined that plaintiff actually had discharge papers from the hospital telling him to  
21 go home (*see* Dkt. 7, p. 3.). The State dismissed the escape charge against plaintiff with  
22 prejudice the next day and released plaintiff (*see* Dkt. 12, pp. 11-12). Plaintiff filed this civil  
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1 rights action on November 15, 2013, against defendants Blowers and Pierce County alleging  
2 false arrest and unlawful incarceration (Dkt. 21, p. 4).

3 Defendants argue the complaint fails to state a claim. Defendants also argue that the  
4 Court lacks subject matter jurisdiction because the statute of limitations for a tort claim for false  
5 arrest and false imprisonment is two years in Washington State (Dkt. 22, p. 4).

## 6 DISCUSSION

### 7 1. The statute of limitations.

8 Defendants argue that Washington State's two year statute of limitations for a state tort  
9 claim for false arrest or false imprisonment, RCW 4.16.100(1), applies to this action (Dkt. 22 pp.  
10 2-3). Defendants also argue that the Court lacks subject matter jurisdiction based on their statute  
11 of limitations argument (*id.*). In a civil rights action, the running of the statute of limitation is an  
12 affirmative defense that does not deprive the Court of subject matter jurisdiction. *See generally*  
13 *Reynolds v. Sheet metal Workers, Local 102*, 702 F.2d 221, 224 (9th Cir. 1981). Thus, the Court  
14 has subject matter jurisdiction. Further, defendants' argument that a shorter two-year time frame  
15 applies fails on the merits. However, even applying the longer three-year statute of limitations,  
16 plaintiff's false arrest claim is untimely.

17 United States District Court Judge Robert J. Bryan has previously decided this issue in a  
18 published opinion. *Manning v. Washington*, 463 F. Supp. 2d 1229, 1234 (W.D. Wn. 2006).  
19 Judge Bryan held that state law tort claims for false arrest and false imprisonment were subject to  
20 a two-year statute of limitations, but that the corresponding civil rights claims are subject to a  
21 three-year statute of limitations. *Id.* *See also, Rose v. Rinaldi*, 654 F.2d 546 (9th Cir.  
22 1981)(holding that there is a three-year statute of limitations for civil rights action filed in  
23 Washington State). Plaintiff filed his action as a civil rights action pursuant to 42 U.S.C. § 1983.  
24

1 | Liberally construing the complaint, plaintiff alleges his Fourth Amendment rights were violated  
 2 | by his arrest for escape on August 26, 2010 (Dkt. 21).

3 | Plaintiff's claims against defendants for false arrest are untimely. Since defendant  
 4 | Blowers arrested plaintiff on August 26, 2010 (Dkt. 21, p. 3) and plaintiff did not file this action  
 5 | until November 15, 2013, the complaint was filed over three years after his arrest (Dkt. 1).  
 6 | Accordingly, the Court recommends dismissing plaintiff's false arrest claims as untimely. In the  
 7 | alternative, the Court will also address the claim on the merits.

8 | Plaintiff also alleges that his Fourth Amendment rights were violated by his false  
 9 | imprisonment from August 26, 2010 until January 12, 2011 (Dkt. 21). Since a portion of that  
 10 | imprisonment occurred within three years of plaintiff's filing of the complaint, this claim does  
 11 | not violate the statute of limitations. Nevertheless, as explained below, his complaint still fails to  
 12 | state a claim.

13 | 2. Failure to state a claim.

14 | A. False arrest.

15 | In a civil rights action, a claim of false arrest is analyzed under the Fourth Amendment.  
 16 | *See generally Atwater v. City of Lago Vista*, 532 U.S. 318, 326 (2001). The question is whether  
 17 | or not the arresting officer had probable cause to arrest. *Atwater*, 532 U.S. at 354.

18 | Under the Fourth Amendment, a warrantless arrest requires probable  
 19 | cause. *See Michigan v. Summers*, 452 U.S. 692, 700, 101 S.Ct. 2587, 69 L.Ed.2d  
 20 | 340 (1981). Probable cause to arrest exists when officers have knowledge or  
 21 | reasonably trustworthy information sufficient to lead a person of reasonable  
 22 | caution to believe that an offense has been or is being committed by the person  
 23 | being arrested. *Beck v. Ohio*, 379 U.S. 89, 91, 85 S.Ct. 223, 13 L.Ed.2d 142  
 24 | (1964). Alternatively, this court has defined probable cause as follows: when  
 "under the totality of circumstances known to the arresting officers, a prudent  
 person would have concluded that there was a fair probability that (the defendant)  
 had committed a crime." *United States v. Smith*, 790 F.2d 789, 792 (9th Cir.1986).

*U.S. v. Lopez*, 482 F.3d 1067, 1072 (9th Cir. 2007).

1 At the time of plaintiff's arrest on August 26, 2010, defendant Blowers knew that the jail  
2 had not released plaintiff from custody on his misdemeanor charges. Defendant Blowers also  
3 knew that plaintiff left the hospital without being released from jail. Defendants argue that the  
4 District Court order that plaintiff be released only on payment of bail was still in effect (Dkt. 22,  
5 p. 4). The facts as alleged in the complaint and shown through public records show that  
6 defendant Blowers had probable cause to arrest plaintiff both on misdemeanor charges and for  
7 escape.

8 Plaintiff does not maintain that defendant Blowers played any part in the decision to hold  
9 plaintiff until January 12, 2011. Accordingly, the Court recommends dismissal of defendant  
10 Blowers and the false arrest claim because plaintiff fails to state a claim.

11 B. False imprisonment.

12 The remaining defendant is Pierce County. Pierce County is considered a municipality  
13 for purposes of § 1983. *See generally Oviatt v. Pearce*, 954 F.2d 1470, 1473-74 (allowing suit  
14 against a county under the civil rights act). To establish municipal liability under § 1983, a  
15 plaintiff must show (1) deprivation of a constitutional right; (2) that the municipality has a  
16 policy; (3) the policy amounts to deliberate indifference to plaintiff's constitutional rights; and  
17 (4) the policy is the moving force behind the constitutional violation. *See Oviatt v. Pearce*, 954  
18 F.2d 1470, 1474 (9th Cir. 1992). The Supreme Court has emphasized that the unconstitutional  
19 acts of a government agent cannot, standing alone, lead to municipal liability; there is no  
20 *respondeat superior* liability under § 1983. *Monell v. New York City Dept. of Social Services*,  
21 436 U.S. 658, 692 (1978). A municipality may only be liable if its policies are the "moving  
22 force [behind] the constitutional violation." *City of Canton v. Harris*, 489 U.S. 378, 389  
23 (1989), (quoting *Monell* at 694).

1 Construing the complaint liberally in favor of plaintiff, the alleged false imprisonment  
 2 was an isolated incident. Plaintiff does not allege that there is any policy or custom of Pierce  
 3 County that amounts to deliberate indifference or violates plaintiff's constitutional rights (Dkt.  
 4 21). Accordingly, the Court recommends that the claims against Pierce County be dismissed for  
 5 failure to state a claim.

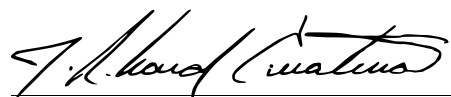
### 6 CONCLUSION

7 The Court recommends granting defendants' motion to dismiss plaintiff's false arrest  
 8 claim as the claim is untimely and because defendant Blowers had probable cause to arrest. The  
 9 Court recommends denying Pierce County's motion on the statute of limitations for the false  
 10 imprisonment claim, but granting summary judgment in favor of Pierce County pursuant to Fed.  
 11 R. Civ. P. 12(b)(6) because there is no allegation that plaintiff's imprisonment was the result of  
 12 Pierce County's customs or policies.

13 Because this is a dismissal for failure to state a claim the dismissal would count as a  
 14 strike pursuant to 29 U.S.C. § 1915(g).

15 Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall have  
 16 fourteen (14) days from service of this Report to file written objections. *See also* Fed. R. Civ. P.  
 17 6. Failure to file objections will result in a waiver of those objections for purposes of de novo  
 18 review by the district judge. *See* 28 U.S.C. § 636(b)(1)(C). Accommodating the time limit  
 19 imposed by Fed. R. Civ. P. 72(b), the clerk is directed to set the matter for consideration on May  
 20 15, 2015, as noted in the caption.

21 Dated this 22<sup>nd</sup> day of April, 2015.

22 

23 J. Richard Creatura  
 24 United States Magistrate Judge